IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.771 OF 2004
IN
WRIT PETITION NO.1504 OF 2004

ALONGWITH

APPEAL NO.772 OF 2004
IN
WRIT PETITION NO.749 OF 2002

GKW Limited ..Appellants.
(Orig.Petnrs.)

Vs.

Rashtriya Kamgar
Sanghatana ..Respondents.

Mr.C.U.Singh with Ms.Geetanjali Prabhu with Mr.Abhijeet Raje i/b.M/s.Gagrat & Co., Advocate for the appellants.

Mr.R.D.Bhatt for the Respondents.

Mr.A.G.Damle for State Bank of India.

CORAM: A.P.SHAH AND
S.J.VAZIFDAR, JJ.

DATED: 3RD MAY, 2005

P.C. :

These Appeals arise out of a complaint of unfair labour practice filed under section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 read with Item 9 of the IVth Schedule, alleging the

failure on the part of the employer to pay the earned wages of the workmen for the period commencing from February, 2002.

2. The Industrial Court arrived at a conclusion that there was a failure on the part of the Appellant Company to comply with its obligation to pay the earned wages of the workmen since February, 2002. However, the Court declined to issue any effective directions for the payment of the earned wages and held that since the matter was under consideration of the BIFR, no time span can be fixed for the payment of the dues and that even in so far as the future wages are concerned, the employer shall pay the wages in accordance with such scheme as may be envisaged by the BIFR.

3. The order of the Industrial Court was challenged by both employer and union by filing writ petitions which were disposed of by the learned single Judge vide order dated 25th June, 2004. The learned single Judge has held that the Industrial Curt having correctly come to the conclusion that the employer was guilty of an unfair labour practice, has manifestly erred in declining to issue effective directions for the payment of the wages on the

ground that the matter is pending consideration before the BIFR. The BIFR has not injuncted the employer from the payment of the earned wages and, in any event, in view of the well settled position in law, the pendency of proceedings under the Sick Industrial Companies (Special Provisions) Act, 1985 cannot be a ground for not paying the earned wages of the workmen. The learned Judge accordingly dismissed the writ petition filed by the Company and allowed the writ petition of the union, by directing that the arrears of wages that are due and payable shall be paid within six equal monthly instalments commencing from 15.7.2004 while the remaining instalments shall be paid on or before 15th day of each succeeding month.

4. Almost a year has elapsed since the order of the learned single Judge but the wages of the workers have not been paid and the workers are without wages for morethan 40 months. No industrial undertaking can work or operate without the work which is rendered by the employees. No work can be demanded save and except for payment of wages and other statutory benefits. These are dues which are payable whether or not an undertaking is sick and constitute an intrinsic part of the employee’s right

to life under Article 21 of the Constitution. To delay or defer the payment of wages until a scheme is sanctioned by the BIFR would lead to manifest miscarriage of justice. The workers whose families depend upon their livelihood cannot be asked to wait till the outcome of the BIFR proceedings.

5. In *Kamani Tubes Ltd. v. Kamani Employees Union, (1997) 2 CLR 263*, a Division Bench of this Court held that Item 9 makes the employer's failure to implement an award, settlement or agreement an unfair labour practice. When an employer does not implement an award, settlement or agreement, he fails to implement the award, settlement or agreement, the phraseology of Item 9 affords no scope for the taking into account of the motive, reason or cause for the failure. This has been reiterated in *APS Star Industries Ltd. v. Star Textile Engineering Employees Union (1997) (1) LLN, 637*. In *Girni Kamgar Sangharsha Samiti v. Matulya Mills Ltd. (2000) 2 CLR, 135*, the Division Bench of this Court held that where the wages of the workers are undisputedly due, the financial inability of the company is no defence to the non-payment of the wages. The same view has been followed in the judgment of the Division Bench in *Warden & Company*

where the Court held that every time when wages are not paid, the employer is engaged in an unfair labour practice under Item 9 of Schedule IV.

6. In *National Textiles Corporation Ltd. v. National Textile Corporation Limited Employees' Union 2004 (1) LLN, 32* the Supreme Court categorically rejected the submission of the employer pleading inability to pay the wages of the workmen on account of the pendency of proceedings before the BIFR. The Court held that the pendency of the proceedings before the BIFR was not a ground to deny relief to the staff working in the mill which was governed by the Sick Textile Undertakings (Nationalisation) Act, 1974. The Supreme Court observed thus :

> "So far as the argument regarding no relief being admissible to the workers in the mills in view of rehabilitation schemes being worked out before the BIFR, we have to note that the proceedings have been pending since 1993, i.e., for more than ten years. The management was all along fully aware of the demand of the workers of the mills in this behalf. Their cases have been pending in Courts since much before the rehabilitation schemes were conceived of. How long shall the concerned workers be continued to be denied their legitimate claims ? In the various deliberations with the

> workers it has been noted that rehabilitation schemes are independent of any orders that may be passed by this Court. Therefore, pendency of the rehabilitation schemes before the BIFR is not a sufficient ground for us to deny relief to the staff/sub-staff working in the mills."

7. In *Baburao P. Tawade v. HES Limited Bombay (1995) 2 CLR, 81*, it was held that the payment of earned wages could not have been within the purview of Section 22(1) of the Act and the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985 must be held to apply only to such proceedings which are not required for the day-to-day running of the Sick Industrial company. The same view has been taken in *Carona Ltd. v. Sitaram Atmaram Ghag (2002) 3 LLN, 167.*

8. In the course of hearing, we asked the counsel for the Appellants to pay atleast part of the wages i.e. atleast about six months wages so that the worker’s family can survive but the counsel, after taking instructions from the company, expressed inability to pay even part of the wages. He candidly submitted that the company is unable to pay even current wages.

9. In the circumstances, we see no reason to interfere with the order of the learned single Judge. Both the appeals stand dismissed.

10. BIFR is directed to expedite the finalisation of the rehabilitation scheme and pass final orders within a period of three months from today.

11. The Registry is directed to communicate this order to the BIFR, New Delhi in BIFR Case No.139 of 2000.